

EXHIBIT B

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UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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WELLS FARGO BANK, NATIONAL
ASSOCIATION,

Index No.: 16 Civ. 02395 (PKC)

Plaintiff,

**AFFIDAVIT IN OPPOSITION TO
TO PLAINTIFF'S REQUEST FOR
ENTRY OF DEFAULT UNDER
FED.R.CIV.P. 55(a)**

Against

JAY A. JOHNSTON,

Defendant

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STATE OF WYOMING

COUNTY OF CONVERSE

I, Jay A. Johnston, being duly sworn, deposes and says:

1. I am the Defendant in the above–entitled action and I am familiar with all of the facts and circumstances in this action.

2. I make this affidavit in opposition to the Plaintiff's request for an entry of default against me pursuant to Fed.R.Civ.P. 55(a) and Local Civil Rule 55.1.

3. In his affidavit in support of the Plaintiff's request for an entry of default, Plaintiff's counsel alleges that "[t]he Defendant, was properly served with a copy of the summons and

complaint on April 11, 2016 in this matter in accordance with Fed.R.Civ.P. 4(e)(1) and Rule 4(d)(1) of the Wyoming Rules of Civil Procedure . . .”

4. Fed.R.Civ.P. 4(e)(1) provides that:

[u]nless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by: following state law for serving a summons in an action brought in courts of general jurisdiction in the state . . . where service is made[.]”

5. Rule 4(d)(1) of the Wyoming Rules of Civil Procedure provides that:

. . . Service shall be made as follows: by leaving copies thereof . . . at the defendant’s usual place of business with an employee of the defendant then in charge of such place of business, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process[.]

6. The proof of service on me [Document No. 9] claims that the summons was served on “Jay Lesser (President Sharps Rifle Co.), who is designated by law to accept service of process on behalf of Jay Johnston (CEO Sharps Rifle Co.)”.

7. However, service of process of the summons and complaint was improper, because the office of Sharps Rifle Co. (at 1195 Highway 20-26-87, Glenrock, Wyoming 82637) is not my “usual place of business.”

8. I am not the CEO of Sharps Rifle Co.

9. I visit the office of Sharps Rifle Co. approximately five to six times per year for less than five days per visit.

10. I am not an employee, an officer (including, but not limited to, Chief Executive Officer), a shareholder or an owner of Sharps Rifle Co.

11. I am an employee of a Puerto Rico limited liability company.

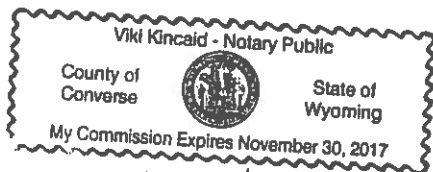
12. My failure to plead or answer the Plaintiff’s summons and complaint was not willful, since I never received a copy of the summons and complaint.

13. Jay Lesser is not my agent, was not authorized to accept service on my behalf and never transmitted a copy of the summons and complaint to me.

14. I never had the opportunity to review and answer the summons and complaint, and I would be deprived of my procedural and substantive due process rights by an entry of default.

15. Wherefore, the undersigned respectfully requests that this Court deny Plaintiff's request for an entry of default against me pursuant to Fed.R.Civ.P. 55(a) and Local Civil Rule 55.1 and that the lawsuit against me be dismissed.

Dated: July 11, 2016



Viki Kincaid
My Commission Expires
Nov. 30, 2017



Jay A. Johnston